IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sumer Singh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.749/2001)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 15-9-2001 in Sessions Case No.46/1999 (141/99) passed by Shri Bhagwan Singh Chauhan, RHJS, Additional Sessions Judge Jhunjhunu.

Date of Judgment: March 14, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Dharamveer Tholia] for the appellant.
Mr. Prem Dewanda]
Mr. Manish Chaudhary]
Mr. Anil Gupta]

Mr. Shyam Arya, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The challenge in this appeal is to the judgment dated September 15, 2001 of Additional Sessions Judge Jhunjhunu in Sessions Case No.46/99 (141/99), whereby the appellant Sumer Singh was convicted under section 304 Part I IPC and sentenced to suffer rigorous imprisonment for ten years and fine Rs.5000/-, in default to further suffer six months rigorous imprisonment.

2. It is the prosecution case that informant Shiv Ram (Pw.11) submitted a written report (Ex.P-20) with the police station Gudha on March 18, 1999 at 4.00 PM stating therein that on the said day when his mother

Barji Devi (since deceased) was cutting crop of Gram the accused who was irrigating his field hurled abuses at his mother and inflicted Gandasi blow on her head as a result of which she fell down and was removed to the hospital. On that report FIR was registered for the offence under section 307 and IPC and investigation commenced. Subsequently on August 13, 1999 Barji Devi died. Dead body was subjected to post mortem and after usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Jhunjhunu. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. He further stated that there was dispute regarding the share in the well and in view of the decision of Panchayat he had already paid Rs.42,500/- to complainant for surrendering his share in the well. On the day of incident he was beaten up and in defence he has been implicated falsely in the instant case. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellant as indicated herein above.

3. I have heard rival submissions and scanned the record.

4. Smt.Barji Devi vide injury report (Ex.P-1) received one incised wound 7cm x ½cm x Bone deep in mid parietal region of scalp. Dr.O.P.Agrawal (Pw.2), who conducted autopsy on the dead body vide autopsy report (Ex.P-6), deposed that the cause of death was septicemia.

5. From the material on record it is revealed that the incident occurred all of sudden and on a spur of moment. Since Sumer Singh

inflicted only one blow on the head of Barji Devi and did not repeat it and he did not behave in cruel or unusual manner, it can be presumed that Sumer Singh had knowledge that the blow inflicted by him was likely to cause death of Barji Devi, even though he had no intention of causing death or such bodily injury as is likely to cause death. Therefore the appellant Sumer Singh is found guilty of the offence punishable under Part II of Section 304 IPC.

6. For these reasons, I partly allow the appeal of appellant Sumer Singh and instead of section 304 Part I IPC, I convict him under section 304 Part II IPC. Looking to the fact that the appellant has already suffered confinement for a period of more than five years and seven days, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Sumer Singh, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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